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DECISION



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Gulzon
The COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-204068

DATE: April 6, 1982

MATTER OF: Private Dewey Scalf -- Entitlement to inactive duty training pay

DIGEST: Army Reserve member awaiting assignment to initial active duty for training attended 22 training assemblies after termination of 180-day period following his enlistment. The member's claim for training pay may not be allowed since Army Regulation 140-1 provides that a nonprior service member is not eligible for inactive duty training pay (drill pay) for assemblies attended after the expiration of 180 days while awaiting initial active duty for training.

May a Reserve member awaiting initial active duty for training be paid inactive duty for training pay for training assemblies attended after 180 days had passed since his enlistment?

This question was asked in a letter dated June 24, 1981, with enclosures, from the Finance and Accounting Officer, United States Army Garrison, Fort Indiantown Gap, Annville, Pennsylvania 17003. The answer is no since the regulations precluding the payment were promulgated pursuant to statute and have the force and effect of law and therefore may not be waived without specific statutory authority. The request was approved by the Department of Defense Military Pay and Allowance Committee and assigned submission number DO-A-1139. It was forwarded here by endorsement dated July 16, 1981, from the Office of the Comptroller of the Army.

Private Dewey Scalf enlisted in the Army Reserves on July 7, 1978. At that time, he was ordered to active duty for training and was assigned a certain training/pay status in accordance with applicable regulations. He sustained an injury in August 1978 which delayed his assignment to his initial active duty for training. During the period he was waiting to physically qualify for this training period, he attended a total of 42 scheduled training assemblies during the period August 12, 1978, to June 10, 1979.

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The Army Finance and Accounting Center paid Private Scalf for 20 assemblies attended between August and December 1978, but disallowed payment for training duty performed during the period January 13 to June 10, 1978. According to the Finance and Accounting Officer, denial of drill pay was based on provisions in Army Regulations allowing Reserve members in Private Scalf's training/pay category a maximum of 24 training assemblies with pay during a 180-day period following enlistment, prior to performing active duty for training.

Section 206 of title 37, United States Code, is the authority for the payment of pay to members of the Reserves and the National Guard for the performance of inactive duty training. Subsection (b) of that section provides in part as follows:

"(b) * * * The Secretary concerned shall, for the National Guard and each of the classes of organization within each uniformed service, prescribe--

* * * * *

(2) the maximum number of assemblies or periods of other equivalent training, instruction, duty, or appropriate duties, that may be counted for pay purposes in each fiscal year or lesser periods of time; and * * * ."

Reserve duty training pay is administered under the provisions of paragraph 80422, AR 37-104-3 (February 28, 1978). Subparagraph 80422(2)(b) of the regulations prescribes eligibility criteria for each of several training/pay categories, and states that these guidelines are in addition to minimum standards set forth in AR 140-1.

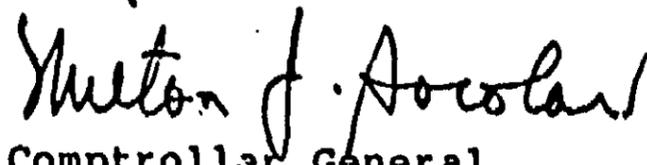
Provisions in paragraph 3-35 and figure 3-1, AR 140-1, assign training/pay status to nonprior service personnel awaiting initial active duty for training. Explanatory notes accompanying figure 3-1 provide that:

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"For NPS obligors and nonobligors who are high-school graduates or possess GED equivalency at the time of enlistment, and bona fide high-school seniors enlisting within 90 days immediately preceding graduation, status will begin immediately and continue for up to 180 days. During this period, the individual may be paid for up to 24 scheduled training assemblies. If IADT [initial active duty for training] does not begin at the end of 180 days, the individual will not be eligible for IDT [drill] pay for training assemblies attended after the expiration of the 180 days while awaiting IADT. * * *"

Since these regulations were promulgated pursuant to 37 U.S.C. 206, they are statutory regulations and have the force and effect of law and may not be waived except when specifically authorized. See 31 Comp. Gen. 193 (1951).

Since Private Scalf was not ordered to initial active duty training at the end of 180 days, he is not eligible for pay for the 22 training assemblies he attended after the expiration of that period. Accordingly, the vouchers forwarded with the request for decision may not be paid and will be retained here.

for 
Comptroller General
of the United States